

THE WILDERNESS SOCIETY

IBLA 88-496

Decided June 9, 1989

Appeal from a decision of the Medicine Lodge Resource Area Manager, Idaho Falls District Office, Bureau of Land Management, relating to management plans for lands inhabited by the Idaho Dunes Tiger Beetle.

Appeal dismissed.

1. Rules of Practice: Appeals: Notice of Appeal

Proper application of the Department's rules of practice requires an affirmative showing that a representative of a named appellant is qualified and authorized to represent any other purported appellant or appellants, if single representation for multiple parties is intended.

2. Administrative Procedure: Administrative Review--Appeals: Jurisdiction--Board of Land Appeals

The Board of Land Appeals does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan or land classification determinations rendered by the BLM. Because a resource management plan establishes management policy, its approval is subject only to protest to the Director, BLM, whose decision is final for the Department. On the other hand, actions on applications following classification of land and decisions which implement a resource management plan or amendment are appealable to the Board.

APPEARANCES: Jane Leeson, Regional Associate, Boise, Idaho, for The Wilderness Society; Robert S. Burr, Esq., Office of the Solicitor, Pacific Northwest Region, Boise Field Office, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

By letter dated March 3, 1988, The Wilderness Society filed a notice of appeal "in regard to decisions made by Donald L. Watson, Medicine Lodge Resource Area Manager, Idaho Falls District, Idaho, BLM [Bureau of Land Management], dated February 3, 1988, which relate to management plans affecting, in particular, lands which include habitat of the Idaho Dunes Tiger Beetle, [C]icendela arenicola, a Category 2 candidate species." The notice of appeal purports to be filed on behalf of three organizations in

addition to The Wilderness Society, viz., the Idaho Environmental Council, the Idaho Natural Resources Legal Foundation, and the Committee for Idaho's High Desert.

[1] At the outset, we address the following procedural matter. There is nothing of record to show that the representative of The Wilderness Society in this case is authorized to practice on behalf of the other organizations identified as co-appellants in The Wilderness Society's notice of appeal. Nor has the Board heard from the other organizations independently of The Wilderness Society's appeal and brief. Notwithstanding the Board's practice until recently regarding this kind of situation, we have decided that proper application of the Department's rules of practice requires an affirmative showing that a representative of a named appellant is qualified and authorized to represent any other purported appellant or appellants, if single representation for multiple parties is intended.

In Southern Utah Wilderness Alliance, 108 IBLA 318 (1989), it was said:

Before addressing the merits of the appeal, we consider one procedural matter. As we stated in our interim order, SUWA's notice of appeal purports to be filed not only on behalf of SUWA, but on behalf of the Wilderness Society and the Sierra Club as well. However, the notice of appeal was signed only by Rodney Greeno, who had previously appeared before BLM on behalf of SUWA only.

Under 43 CFR 1.3(b), a person is authorized to "practice" before the Board only if he is an attorney admitted to practice or, inter alia, is practicing in connection with a particular matter in his own behalf or on behalf of an association of which he is an employee. "Practice" before the Department includes any action to support a right on behalf of another person or party (43 CFR 1.2(c)) and, thus, includes the filing of a notice of appeal before this Board. A notice of appeal filed by a person who is not authorized by regulation to practice before the Department is properly dismissed. David D. Beal, 90 IBLA 87 (1985), and cases cited.

As it did not appear that Greeno was an employee of the Wilderness Society or the Sierra Club, that he is a licensed attorney who was authorized to represent those two groups in filing an appeal, or that any of the other circumstances described in 43 CFR 1.3(b)(3) appertained, we directed the Wilderness Society and the Sierra Club to show cause why their appeals should not be dismissed. The Wilderness Society responded, but has not adequately explained its failure to execute a notice of appeal on its own behalf. The Sierra Club did not respond. Accordingly, their appeals are dismissed for want of a timely, cognizable notice of appeal. 43 CFR 4.410.

108 IBLA at 321.

109 IBLA 176

Consistent with the above disposition and the Board's obligations under 43 CFR 1.2 and 1.3, we must deem the present appeal to be from The Wilderness Society alone, hereafter referred to as appellant. In the future, a party that wishes to join in another's appeal is well advised to file its own notice of appeal and statement of reasons (SOR), sign appeal documents along with the other party, or authorize the other party's attorney, in advance, to represent it as well.

In its SOR, appellant alleges that portions of the Medicine Lodge Resource Management Plan (1985) (RMP), the Egin-Hamer Road Plan Amendment (1987), and the Medicine Lodge Final Wilderness Environmental Impact Statement (EIS) (1988), which address the Idaho Dunes Tiger Beetle, are inaccurate. Appellant asserts that statements in the three documents concerning the beetle were based on a conversation between a BLM employee and Gary Shook, an environmental health consultant, and that the documents misinterpret and misrepresent the conversation (SOR at 3).

Also accompanying the SOR is a copy of a letter dated January 5, 1988, from The Wilderness Society to John Butz, Wilderness Coordinator, Idaho Falls District, BLM (Exh. 7). Among other things, this letter recommends five actions BLM should take to protect the Dunes Tiger Beetle, including arranging for a study of the beetle, closing and fencing suspected breeding areas and habitat to off-road vehicle use, and, following completion of the study, amending all three documents.

By letter dated February 3, 1988, Donald L. Watson, Medicine Lodge Area Manager, responded to The Wilderness Society's letter, and it is this BLM response from which The Wilderness Society has appealed. Watson's letter acknowledged that there may have been "a misunderstanding or perhaps a misinterpretation" of what Shook had said in communication with BLM. While acknowledging that "any inaccuracies must be corrected," Watson stated this should only be accomplished "once adequate and supportive information is available on the beetle." Watson reported that BLM was in the process of selecting qualified researchers to collect data about the beetle, that closure was not practical until the study identified areas of breeding and critical habitat, and that, following the study, procedures could be undertaken to integrate the information into the EIS and RMP. Watson also noted that, based on the Egin-Hamer Road Plan Amendment, a Record of Decision had been issued to offer rights-of-way to the local counties to construct a road and that BLM would soon be issuing the document.

Appellant views Watson's letter as "denying any change in management" and contends that it "constituted a decision document" (SOR at 3). In its answer brief, BLM submits that the Watson letter cannot be considered a decision document when the Area Manager was merely "responding to some general suggestions put forth by The Wilderness Society brought about by their interest in the Dunes Tiger Beetle" (Answer at 4). Assuming The Wilderness Society's letter constituted a request to amend the management plan for the Medicine Lodge Resource Area, BLM states such a request was premature inasmuch as further studies of the beetle were ongoing and that BLM would "not be in a position to consider any such amendment until the study on the beetles is concluded" (Answer at 7).

[2] As a general matter, the Board of Land Appeals has authority to review all decisions by BLM relating to the use and disposition of the public lands. 43 CFR 4.1(b)(3); see 43 CFR 4.410(a). However, the Board does not have jurisdiction to review decisions to approve or amend an RMP. Such plans "are designed to guide and control future management actions" rather than implement decisions on actions that affect specific parcels of land or rights to use Federal lands. 43 CFR 1601.0-2, 1601.0-5(k); California Association of Four Wheel Drive Clubs, Inc., 108 IBLA 140 (1989); Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19, 23, 94 I.D. 35, 38 (1987); Oregon Shores Conservation Coalition, 83 IBLA 1, 2 (1984). Because an RMP establishes management policy, its approval is subject only to protest to the Director, BLM, whose decision is final for the Department. 43 CFR 1610.5-1. In Harold E. Carrasco, 90 IBLA 39 (1985), the Board concluded that the denial of a request to amend an RMP is also within the scope of the regulation providing for protests to the Director of BLM.

Nor does the Board possess authority to review land classification determinations made by BLM. 43 CFR 4.410(a)(1). On the other hand, actions on applications following classification of land and decisions which implement a management plan or amendment are appealable to the Board. Carrasco, *supra* at 41; Wilderness Society, 90 IBLA 221, 224 (1986); see 43 CFR 1610.5-3(b).

BLM seeks dismissal of this appeal on the grounds that Watson's response of February 3, 1988, was not a decision. While not everything that BLM commits to writing in response to inquiries from the public it serves must be deemed a "decision," under the circumstances of this case Watson's letter clearly was a decision, as well as a response "to some general suggestions put forth by The Wilderness Society \* \* \*" (Answer at 4).

BLM's February 3, 1988, letter said that BLM was planning to begin the requested study in the spring of 1988; that protective action should be deferred until the study identified where the beetle's critical habitat is; that if the study indicated the need for a management plan for the beetle, one would be prepared and integrated into the Sand Mountain Wilderness Study Report to Congress, and the RMP would be amended if it was not in conformance with the management plan for the beetle; that public participation and comment would be sought in designing management for the beetle; and that because it had no information indicating the Egin-Hamer road would adversely impact the beetle, BLM planned to issue rights-of-way so the road could be constructed.

Although we conclude the above response constitutes a decision by BLM, the appeal may nevertheless be dismissed on the following grounds: (1) appellant's request for a study of the beetle was granted, so appellant was not adversely affected by BLM's decision (see 43 CFR 4.410(a)), (2) we have already considered the issues appellant raises concerning the impacts of the Egin-Hamer road and of off-road vehicle use on the beetle population in Shoshone-Bannock Tribes & The Wilderness Society, 108 IBLA 198 (1989), and Committee for Idaho's High Desert, 108 IBLA 277 (1989), so those issues

are subject to the doctrine of administrative finality, 1/ and (3) as previously noted, we have no jurisdiction to entertain an appeal from the denial of a request to amend a RMP.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of The Wilderness Society is dismissed.

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Wm. Philip Horton  
Chief Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge

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1/ Appellant's principal contention before the Board is that BLM has relied on inaccurate information concerning the Idaho Dunes Tiger Beetle and that it has ignored attempts at correction of that information by Gary Shook. In Shoshone-Bannock Tribes & The Wilderness Society, *supra*, this same contention was aired in an appeal involving BLM's granting of rights-of-way to Fremont and Jefferson counties for the construction and use of the Egin-Hamer Road.

The Board considered the Tribes' argument that BLM has misrepresented the well-being of the Idaho Dunes Tiger Beetle and that, specifically, Gary Shook's efforts to correct erroneous reports on the beetle were to no avail. After discussing the findings of a formal study of the Dunes Tiger Beetle by Robert C. Anderson, Ph.D., entomologist at Idaho State University, which was completed in September 1988, after the events in question here, the Board held:

"Regardless of whether BLM misrepresented, misinterpreted, or misunderstood Shook, it is clear that Dr. Anderson's study does not conflict in any material way with the findings set forth in the 1987 FEIS. Indeed, as to the issue of distribution of C. arenicola, the Anderson study shows this species to be more widely distributed than previously believed. Such finding is fully supportive of the FEIS' conclusion that the beetle's candidate status would probably not be changed by the issuance of the rights-of-way. We recognize that the Anderson study was completed after BLM's approval of the FEIS, and was not available for public comment before BLM issued the rights-of-way in question. However, we find no suggestion in the record that the BLM statement of Shook's professional opinion was in any way intentional or mischievous. We, therefore, find that appellant Tribes have not established error in the 1987 FEIS, as supported by the Anderson study." 108 IBLA 198, 207 (footnotes omitted).

